

By: Zerwas

H.B. No. 1319

A BILL TO BE ENTITLED

AN ACT

relating to use of health information technology in this state;
creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is
amended by adding Chapter 74A to read as follows:

CHAPTER 74A. LIMITATION OF LIABILITY RELATING TO HEALTH
INFORMATION EXCHANGES

Sec. 74A.001. DEFINITIONS. In this chapter:

(1) "Health care provider" means any individual,
partnership, professional association, corporation, facility, or
institution duly licensed, certified, registered, or chartered by
this state to provide health care or medical care, including a
physician. The term includes:

(A) an officer, director, shareholder, member,
partner, manager, owner, or affiliate of a physician or other
health care provider; and

(B) an employee, independent contractor, or
agent of a physician or other health care provider acting in the
course and scope of the employment or contractual relationship.

(2) "Health information exchange" has the meaning
assigned by Section 182.151, Health and Safety Code. The term
includes:

(A) an officer, director, shareholder, member,

partner, manager, owner, or affiliate of the health information exchange; and

(B) an employee, independent contractor, or agent of the health information exchange acting in the course and scope of the employment or contractual relationship.

(3) "Physician" means:

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code;

(B) a professional association organized by an individual physician or a group of physicians;

(C) a partnership or limited liability partnership formed by a group of physicians;

(D) a limited liability company formed by a group of physicians;

(E) a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code; or

(F) a single legal entity authorized to practice medicine in this state owned by a group of physicians.

Sec. 74A.002. LIMITATION ON LIABILITY OF HEALTH CARE PROVIDERS RELATING TO HEALTH INFORMATION EXCHANGES. (a) The use of, failure to use, or existence of a health information exchange does not establish a standard of care applicable to a health care provider for obtaining, using, or disclosing patient information.

(b) Unless a health care provider acts with intent or gross negligence, the health care provider is not liable for any damages, penalties, or other relief related to:

(1) the health care provider's or another health care

1 provider's obtainment of or failure to obtain patient information
2 from a health information exchange;

3 (2) the health care provider's or another health care
4 provider's disclosure of or failure to disclose patient information
5 to a health information exchange;

6 (3) the health care provider's or another health care
7 provider's reliance on inaccurate patient information obtained
8 from or disclosed by a health information exchange; or

9 (4) the obtainment, use, or disclosure by a health
10 information exchange, another health care provider, or any other
11 person, in violation of federal or state law, of any patient
12 information that the health care provider provided to a health
13 information exchange or to another health care provider in
14 compliance with the Health Insurance Portability and
15 Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and
16 other applicable federal and state law.

17 (c) Nothing in this section may be construed to create a
18 cause of action or to create a standard of care, obligation, or duty
19 that provides a basis for a cause of action.

20 Sec. 74A.003. LIMITATION ON LIABILITY OF HEALTH INFORMATION
21 EXCHANGES. (a) Unless a health information exchange acts with
22 intent or gross negligence, the health information exchange is not
23 liable for any damages, penalties, or other relief related to:

24 (1) a health care provider's obtainment of or failure
25 to obtain patient information from the health information exchange;

26 (2) a health care provider's disclosure of or failure
27 to disclose patient information to the health information exchange;

1 (3) a health care provider's reliance on inaccurate
2 patient information obtained from or disclosed by the health
3 information exchange; or

4 (4) the obtainment, use, or disclosure by a health
5 care provider or any other person, in violation of federal or state
6 law, of any patient information that was provided to the person by
7 the health information exchange in compliance with:

8 (A) the Health Insurance Portability and
9 Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and
10 other applicable federal and state law; and

11 (B) the health information exchange's policies.

12 (b) Nothing in this section may be construed to create a
13 cause of action or to create a standard of care, obligation, or duty
14 that provides a basis for a cause of action.

15 SECTION 2. Section [531.0162](#), Government Code, is amended by
16 adding Subsections (e) and (f) to read as follows:

17 (e) The executive commissioner shall ensure that:

18 (1) all information systems available for use by the
19 commission or a health and human services agency in sending
20 protected health information to a health care provider or receiving
21 protected health information from a health care provider, and for
22 which planning or procurement begins on or after September 1, 2015,
23 are capable of sending or receiving that information in accordance
24 with the applicable data exchange standards developed by the
25 appropriate standards development organization accredited by the
26 American National Standards Institute;

27 (2) if national data exchange standards do not exist

1 for a system described by Subdivision (1), the commission makes
2 every effort to ensure the system is interoperable with the
3 national standards for electronic health record systems; and

4 (3) the commission and each health and human services
5 agency establish an interoperability standards plan for all
6 information systems that exchange protected health information
7 with health care providers.

8 (f) Not later than December 1 of each even-numbered year,
9 the executive commissioner shall report to the governor and the
10 Legislative Budget Board on the commission's and the health and
11 human services agencies' progress in ensuring that the information
12 systems described in Subsection (e) are interoperable with one
13 another and meet the appropriate standards specified by that
14 subsection.

15 SECTION 3. Section 81.044(a), Health and Safety Code, is
16 amended to read as follows:

17 (a) The board shall prescribe the form and method of
18 reporting under this chapter, which may be in writing, by
19 telephone, by electronic data transmission, through a health
20 information exchange as defined by Section 182.151 if requested and
21 authorized by the person required to report, or by other means.

22 SECTION 4. Section 82.008(a), Health and Safety Code, is
23 amended to read as follows:

24 (a) To ensure an accurate and continuing source of data
25 concerning cancer, each health care facility, clinical laboratory,
26 and health care practitioner shall furnish to the department ~~board~~
27 ~~or its representative~~, on request, data the board considers

1 necessary and appropriate that is derived from each medical record
2 pertaining to a case of cancer that is in the custody or under the
3 control of the health care facility, clinical laboratory, or health
4 care practitioner. The department may not request data that is more
5 than three years old unless the department is investigating a
6 possible cancer cluster. At the request and with the authorization
7 of the applicable health care facility, clinical laboratory, or
8 health care practitioner, data may be furnished to the department
9 through a health information exchange as defined by Section
10 182.151.

11 SECTION 5. Section 161.007(d), Health and Safety Code, is
12 amended to read as follows:

13 (d) A health care provider who administers an immunization
14 to an individual younger than 18 years of age shall provide data
15 elements regarding an immunization to the department. A health
16 care provider who administers an immunization to an individual 18
17 years of age or older may submit data elements regarding an
18 immunization to the department. At the request and with the
19 authorization of the health care provider, the data elements may be
20 provided through a health information exchange as defined by
21 Section 182.151. The data elements shall be submitted in a format
22 prescribed by the department. The department shall verify consent
23 before including the information in the immunization
24 registry. The department may not retain individually identifiable
25 information about an individual for whom consent cannot be
26 verified.

27 SECTION 6. Section 161.00705(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) The department shall maintain a registry of persons who
3 receive an immunization, antiviral, and other medication
4 administered to prepare for a potential disaster, public health
5 emergency, terrorist attack, hostile military or paramilitary
6 action, or extraordinary law enforcement emergency or in response
7 to a declared disaster, public health emergency, terrorist attack,
8 hostile military or paramilitary action, or extraordinary law
9 enforcement emergency. A health care provider who administers an
10 immunization, antiviral, or other medication shall provide the data
11 elements to the department. At the request and with the
12 authorization of the health care provider, the data elements may be
13 provided through a health information exchange as defined by
14 Section 182.151.

15 SECTION 7. Section 161.00706(b), Health and Safety Code, is
16 amended to read as follows:

17 (b) A health care provider, on receipt of a request under
18 Subsection (a)(1), shall submit the data elements to the department
19 in a format prescribed by the department. At the request and with
20 the authorization of the health care provider, the data elements
21 may be submitted through a health information exchange as defined
22 by Section 182.151. The department shall verify the person's
23 request before including the information in the immunization
24 registry.

25 SECTION 8. Chapter 182, Health and Safety Code, is amended
26 by adding Subchapter D to read as follows:

SUBCHAPTER D. HEALTH INFORMATION EXCHANGES

Sec. 182.151. DEFINITION. In this subchapter, "health information exchange" means an organization that:

(1) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement with the organizations;

(2) as a primary business function, compiles or organizes health-related information designed to be securely transmitted by the organization among physicians, other health care providers, or entities within a region, state, community, or hospital system; or

(3) assists in the transmission or receipt of electronic health-related information among physicians, other health care providers, or entities within:

(A) a hospital system;

(B) a physician organization;

(C) a health care collaborative, as defined by Section 848.001, Insurance Code;

(D) a Pioneer Model accountable care organization established under the initiative by the Centers for Medicare and Medicaid Services Innovation Center; or

(E) an accountable care organization participating in the Medicare Shared Savings Program under 42 U.S.C. Section 1395jjj.

Sec. 182.152. AUTHORITY OF HEALTH INFORMATION EXCHANGE.

1 (a) Notwithstanding Sections 81.046, 82.009, and 161.0073, a health
2 information exchange may access and transmit health-related
3 information under Sections 81.044(a), 82.008(a), 161.007(d),
4 161.00705(a), and 161.00706(b) if the access or transmittal is:

5 (1) made for the purpose of assisting in the reporting
6 of health-related information to the appropriate agency;

7 (2) requested and authorized by the appropriate health
8 care provider, practitioner, physician, facility, clinical
9 laboratory, or other person who is required to report
10 health-related information; and

11 (3) made in accordance with the requirements of this
12 subchapter and all other state and federal law.

13 (b) A health information exchange may only use and disclose
14 the information that it accesses or transmits under Subsection (a)
15 in compliance with this subchapter and all applicable state and
16 federal law, and may not exchange, sell, trade, or otherwise make
17 any prohibited use or disclosure of the information.

18 Sec. 182.153. COMPLIANCE WITH LAW; SECURITY. A health
19 information exchange that collects, transmits, disseminates,
20 accesses, or reports health-related information under this
21 subchapter shall comply with all applicable state and federal law,
22 including secure electronic data submission requirements.

23 Sec. 182.154. CRIMINAL PENALTY. (a) A person who collects,
24 transmits, disseminates, accesses, or reports information under
25 this subchapter on behalf of or as a health information exchange
26 commits an offense if the person, with the intent to violate this
27 subchapter, allows health-related information in the possession of

1 a health information exchange to be used or disclosed in a manner
2 that violates this subchapter.

3 (b) An offense under this section is a Class A misdemeanor.

4 SECTION 9. Chapter 74A, Civil Practice and Remedies Code,
5 as added by this Act, applies only to a cause of action that accrues
6 on or after the effective date of this Act. A cause of action that
7 accrues before the effective date of this Act is governed by the law
8 in effect immediately before the effective date of this Act, and
9 that law is continued in effect for that purpose.

10 SECTION 10. This Act takes effect September 1, 2015.